IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION
SECOND APPEAL NO.898 OF 2003

1. Sou.Shubhada Anil Gokhale
2. Shri Shirish Waman Bhave.. Appellants
(Original Plaintiffs)

Versus

1. Shri Prabhakar V. Mehandale
2. Smt. Rakhmabai Vithal Mehandale
since deceased through her legal heirs
2/1 to 2/8 and Respondent No.1,
2/1. Vaijanath Vithal Mehandale
2/2. Ramesh Vithal Mehandale
2/3. Smt. Sudha Shankar Bongar
2/4. Smt. Mangala Mahadev Gadre
2/5. Smt. Malati Madhukar Sane
2/6. Smt. Sunanda Ramkrishna Dhale
2/7. Smt. Varsha Vinayak Natu
2/8. Smt. Shailaja Sampatrao Shinde
3. Shri Shashank Waman Bhave
(SA stand dismissed as against
Respondent No.3 vide its order
dated 29/04/2006) .. Respondents

Smt. S.S.Gokhale for the Appellants-original Plaintiffs
Mr.M.S. Lagu a/w. Mr. Limaye for Respondent Nos.1 & 2/1 to 2/8.

CORAM : S.R. SATHE,J
DATED : 16/08/2007

ORAL JUDGEMENT :-

1. Appellants-original plaintiffs in regular civil suit No.398 of 1979 have preferred this appeal against the judgement and order passed by the Court of 5th Additional District Judge, Thane in Civil Appeal No.308 of 2000 whereby the order passed by the trial Court dismissing the Plaintiffs' suit for dissolution and accounts of the partnership firm was confirmed. For

the sake convenience hereafter the parties shall be referred to as 'Plaintiffs' and 'defendants'.

2. The brief facts giving rise to this appeal are as under :-

One Waman Narayan Bhave, father of present Plaintiffs was carrying on business of exporting ready made garments. The defendant No.1 Prabhakar V. Mehandale was associated with him in the said business. In May-1978, Waman Narayan Bhave closed his business and defendant Nos. 1 and 2 entered into partnership with Plaintiffs for the purpose of carrying on business of exporting ready made garments and other products. According to Plaintiffs, defendant No.1 withdrew large sum of money from the bank account of the firm. He also collected large amounts to whom the partnership firm had sold the goods. The defendant No.1 did not maintain proper books of accounts. The Plaintiffs were in fact admitted to the partnership firm only for benefit and were not liable for the loss. Plaintiffs, therefore, decided to dissolve the partnership. Hence, on 14/05/1979, Waman Narayan Bhave next friend, father and natural guardian of the Plaintiffs filed the above mentioned suit for dissolution of the partnership firm as well as for accounts of the dissolved firm.

3. The defendants filed their Written Statement at Exh-40 and denied that in May-1978, they entered into partnership with the Plaintiffs for carrying on business of sale and export of ready made garments. They contended that defendants were never partners in the firm in question and the suit is liable to be dismissed on that count. According to them, on the date of filing of the suit Plaintiffs were minors. Besides this, Plaintiff No.3 was of unsound mind and the suit is bad in view of the provisions of subsection-4 of Section-30 of Indian Partnership, 1932.

4. The defendants also contended that Plaintiffs have not followed the procedure laid down under Order-32, Rule-4 and 15 of CPC and as such the same is liable to be dismissed on that count also.

5. According to defendants, at the instance of Plaintiff's next friend Waman Narayan Bhave the defendants entered into partnership. They, however, contended that the defendant No.1 was not in exclusive control of affairs of partnership. The defendant No.1 was active and working partner, concern with securing orders from the foreign buyer or firms for export of

various garments. He was never concerned with the maintenance of accounts of partnership firm but on the contrary, the same were maintained by Waman Narayan Bhave and it was at a place where he was also having his proprietary business in the name and style 'Quality Apparel Industry' prior to 10/12/1976. According to them, they were in fact required to close the establishment at Thane because of the dishonest tactics persuade by Waman Narayan Bhave. They also contended that they had left some blank letterheads signed by them with Mr.Bhave to make use of the same for negotiations of the bills. However, he misused the same and cheated the defendants to the tune of Rs.3 lakhs. According to them, Waman Bhave was under obligation to pay Rs.4 lakhs to them. So, on all these grounds, the defendants contended that Plaintiffs are not entitled to file present suit and therefore, prayed for the dismissal of the same.

6. On these pleadings the learned Trial Judge framed issues at Exh-48. Both the parties adduced oral and documentary evidence. After considering the said evidence, the learned Trial Judge came to the conclusion that suit is not maintainable in view of the provisions of Order-32 of CPC and the same is also

barred by the provisions of Section-30(4) of the Indian Partnership Act. He, therefore, dismissed the Plaintiffs' suit.

7. Being aggrieved by the same, Plaintiffs filed Civil Appeal No.308 of 2000. It seems that at that time, the original Plaintiffs had become major. The first Appellate Court after hearing the arguments of both the sides came to the conclusion that suit was not properly filed and it was hit by the provisions of order 32 of CPC. The Appellate Court also held that in view of the provisions of Section 30(4) of the Indian Partnership Act, the suit is bad. He, therefore, dismissed the appeal.

8. The above mentioned order is challenged in the present Second Appeal. In this appeal before me, Smt.S.S.Gokhale learned Advocate for the Appellants-original Plaintiffs urged only 3 points. Firstly, she submitted that when the suit was filed Plaintiffs were minors and their father was natural guardian as per the provisions of Section-6 of the Hindu Minority and Guardianship Act and hence was entitled to file the said suit. So, it can not be said that suit was bad for non-compliance of the provisions of Order-32 of CPC.

Secondly, she canvassed before me that Plaintiffs who were minors were admitted to the partnership only for the profits of the partnership firm. So, both the Courts below wrongly held that the suit was bad in view of the provisions of Section 30(4) of the Indian Partnership Act. According to her, there is nothing in Section-30 which says that when the minors are admitted to partnership for the profits of the firm, the firm must be in existence. Lastly, she submitted that admittedly, during the pendency of the suit, the minor Plaintiffs became major and necessary amendment was carried out in the plaint and they have further prosecuted the suit as well as appeal. So, the trial Court ought to have decided the entire suit on merits in stead of dismissing it on the grounds mentioned above. She, therefore, submitted that the suit be remanded back to the Trial Court and the trial Court be directed to decide all the issues. As against this, Shri Lagu, learned Advocate for the Respondent-original defendant submitted that both the Courts below have rightly construed the provisions of Order-32, Rule-4 and 15 and Section-30(4) of Indian Partnership Act. Both these provisions go to the root of the matter and establish that the suit is not maintainable, so, both the Courts were justified in dismissing the suit. He,

therefore, submitted that there is no necessity to remand the matter and the appeal be dismissed.

9. It is not in dispute that the suit filed by the Plaintiffs was for dissolution of the partnership and for the accounts of the dissolved firm. According to Plaintiffs, they were admitted to partnership firm for the profits of the partnership firm. The Plaintiffs have relied upon the partnership deed Exh-55. So, one thing is certain that it is first necessary to see whether the Plaintiffs can sue on the basis of this partnership deed Exh-55. It would be worthwhile to reproduce the relevant portion of the said Deed. It is as under :-

" ***PARTNERSHIP DEED***

THIS DEED OF PARTNERSHIP made this Second day of May, 1978 between

1	*Mr. Prabhakar Vithal Mehandale, aged 39, hereinafter called the*	*FIRST PARTNER*
2	*Smt. Rakhmabai Vithal Mehandale, aged 64, hereinafter called the*	*SECOND PARTNER*
3	*Miss Shubhada Waman Bhave, aged 16, (d/o.Shri Waman Narayan Bhave), hereinafter called the*	*THIRD PARTNER*

4 *Master Shirish Waman Bhave, Minor, aged 13, (s/o. Shri Waman Narayan Bhave), hereinafter called the* *FOURTH PARTNER*

5 *Master Shashank Waman Bhave, Minor, aged 11, (s/o. Shri Waman Narayan Bhave), hereinafter called the* *FIFTH PARTNER*

Whereas all the above parties to this deed hereby by this Partnership Deed agree since this day to carry on 'Purchase, Sale and Export of Readymade Garments and such other products etc. business in partnership on the following terms and conditions :

1. (a).....

(b).....

(c) .....

2. .....

3. .....

4. .....

5. It is agreed that the three minor Partners viz. 1. Miss Shubhada Waman Bhave, 2. Master Shirish Waman Bhave, 3. Master Shashank Waman Bhave are only to the benefits of the partnership and the said

minors are not in any way liable for any losses of the firm.

6. .....

7. The net profits and losses of the business as ascertained in terms of Para (6) above shall be divided between the Partners in the following proportion.

SHARE IN PROFIT & LOSS

	PROFIT	*LOSS*
1.Mr.Prabhakar Vithal Mehandale	*20%*	*50%*
2.Smt.Rakhmabai Vithal Mehandale	*20%*	*50%*
3.Miss. Shubhada Waman Bhave	*20%*	*Nil*
4.Master Shirish Waman Bhave	*20%*	*Nil*
5.Master Shashank Waman Bhave	*20%*	*Nil*

8. .....

9. .....

10. .....

11. .....

12. .....

13. Any dispute/s arising between the Partners will be referred to an arbitration to be appointed by all the Partners and the decision of such Arbitration shall be binding on all the Partners.“

10. Bare reading of the above mentioned document shows that agreement of partnership is in fact created by this deed between 5 partners, mentioned above. Admittedly, Nos.3,4 and 5 of them were minors on the date of the said partnership. It is pertinent to note that there is nothing in the said deed to show that their names have been included with the consent of the guardian of the said minors. It is not mentioned that they are represented through guardian. The very words “Whereas all the above parties to this partnership deed agree“ clearly indicate that even minors have been shown as parties to the agreement. Naturally, question arises whether under such circumstances, this agreement of partnership can be said to be legal and valid ? For determining this question, it is necessary first to see the provision of Section-4 of the Indian Partnership Act. It runs as follows :-

> *4. Definition of “partnership”, “Partner”, “firm” and “firm name”:-*
>
> *“Partnership” is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.*
>
> *Persons who have entered into*

partnership with one another are called individually “partners” and collectively a “firm”, and the name under which their business is carried on is called the “firm name”.

11. From the above section, it is very clear that an agreement is a essential condition of partnership deed. Naturally, when in the above deed Exh-55, it is said “Whereas all the above parties to this partnership deed agree” we have to see whether the parties who have agreed were in fact competent to make an agreement. In the partnership agreement in question, there is no reference of minors guardian. Nor he has signed it. The minors have in fact been shown as partners. So, where no one acting as minor's guardian has signed the document and it is said that agreement with minors have come into existence, then, such agreement or deed purporting to be a partnership with the minors must be held to be wholely invalid. Such deed in fact can not be even registered. We must bear in mind that partnership is a result of contract. The contracts of minor in India are void ab initio. The contract entered into with minor is a nullity. So, the basic document on which the entire suit is drafted is illegal and void.

Naturally, the said suit is liable to be dismissed on this ground alone. Alleged partnership is in fact proved. Merely because, in this partnership deed while disclosing the shares of the 5 partners, minors have been given share only in profit and not in losses, we can not jump to the conclusion that this is a valid agreement. On the face of the document it is quite clear that the alleged agreement of partnership is shown to be entered between the 5 partners and 3 of them were admittedly minors. No name of their guardian is shown. Nor it is shown that they were represented by their guardian. So, the entire case of creation of partnership firm by virtue of the said document Exh-55 goes away.

12. It was argued on behalf of the Plaintiffs that in the instant case, minor Plaintiffs have been admitted to partnership as per the provision of section-30 of the Indian Partnership Act and as such the partnership deed in question has to be held valid. In order to find out whether there is any substance in this argument, it would be worthwhile to see what Section-30 says. It runs as follows :-

> *"**30.** Minors admitted to the benefits of partnership:-*

(1) A person who is a minor according to the law to which he is subject may not be a partner in a firm, but, with the consent of all the partners for the time being, he may be admitted to the benefits of partnership.

(2) Such minor has a right to such share of the property and of the profits of the firm as may be agreed upon, and he may have access to and inspect and copy any of the accounts of the firm.

(3) Such minor's share is liable for the acts of the firm, but the minor is not personally liable for any such act.

(4) Such minor may not sue the partners for an account or payment of his share of the property or profits of the firm, save when severing his connection with the firm, and in such case the amount of his share shall be determined by a valuation made as far as possible in accordance with the rules contained in Section-48 :

Provided that all the partners acting together or any partner entitled to dissolve the firm upon notice to other

partners may elect in such suit to dissolve the firm, and thereupon the Court shall proceed with the suit as one for dissolution and for settling accounts between the partners,and the amount of the share of the minor shall be determined alongwith the shares of the partners."

13. It is necessary to find out whether this is a case where minors have been admitted to the benefits of the partnership or whether this is a case where the agreement of partnership is in fact with minors and they have been made partners in the partnership. At the cost of the repetition, it must be said that the document itself shows minors as partners No.3,4 and 5. Not only that but it has been further mentioned in the said deed that all the above mentioned parties agreed. So, this is in fact an agreement with minors which is not at all permissible. It is nowhere stated in this partnership deed at Exh-55 that there was a partnership firm of No.1 and 2 and that 3 to 5 were admitted only for the benefits of partnership. Had it been so, it would have been a totally different thing. Then it could have been said that the case falls under section-30(4) of the Indian Partnership Act. Sub section-1 of

Section-30 makes it clear that the minor can not be a partner in firm. This is a corollary to Section-4 of the Indian Partnership Act which makes it clear that partnership is a relation between persons who have agreed to share the properties of a business carried on by all or any one of them acting for all. Here, Exh-55 has in fact made minors as partners which is in fact prohibited and not permissible as per sub section-1 of Section-30 r/w. Section-4 of the Indian Partnership Act. The wording in Section-30 in fact pre-supposes existence of some partnership firm and then partners of the said firm agreeing to admit minor to the benefit of the partnership. Here prior to Exh-55, there was no partnership in existence. On that day only one document was executed i.e. partnership deed in which the agreement is shown between 5 members out of whom 3 are minors. So, document Exh-55 shows that the minors are made partners and so, the same is certainly void and suit can not be filed on the basis of the said document. So, both the Courts below were fully justified in holding that suit is liable to be dismissed on that count.

14. It is not in dispute that when the suit was filed, Plaintiffs were minors and their next friend,

father, natural guardian Waman Narayan Bhave filed the present suit for them. It is the contention of the defendants that Waman Narayan Bhave's interest was adverse to that of minors and as such he can not be said to be next friend as per the provision of Order-32, Rule-4 (1) of CPC. The said rule is as under :-

> ***"4. Who may act as next friend or be appointed guardian for the suit-***
>
> *(1) Any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the suit ;*
>
> *Provided that the interest of such person is not adverse to that of the minor and that he is not, in the case of a next friend, a defendant, or, in the case of a guardian for the suit, a plaintiff."*

15. In the instant case, defendants have adduced evidence to show that Waman Narayan Bhave was in fact maintaining accounts of the firm and he in fact withdrew the amount. By doing such act, he in fact caused loss to the firm and so his actions were certainly pre-judicial to the minors interest in the firm. So, his conduct vis a vis minor's interest in the

firm must be construed to be adverse to the interest of the minor. Looking to the case from this angle, both the Courts below have rightly held that the present suit is hit by provisions of Order-32, Rule-4(1) of CPC.

16. Thus, from the above discussion, it is very clear that suit in question is liable to be dismissed on the above mentioned two legal provisions. So, under such circumstances, it is not at all necessary to remand the case to the Trial Court, particularly when, the litigation is going on for last 28 years and the finding of other issues is not at all likely to change the fate of suit or appeal.

17. In this view of the matter, there is no substance in this appeal.

Hence, the appeal is dismissed.

Under the circumstances of the case, parties to bear their own costs of this appeal.

(S.R. SATHE,J.)